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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

ELSA GEBREAMLAK, Plaintiff and Appellant, v. OAKLAND UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	A133948 (Alameda County Super. Ct. No. RG11580738)

Plaintiff Elsa Gebreamlak appeals from the judgment of dismissal following the trial court's ruling sustaining, without leave to amend, defendant the Oakland Unified School District's demurrer to her complaint. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[1]

On December 5, 2007, plaintiff was injured at Montera Middle School (Montera) when a fellow student intentionally caused her to fall down, resulting in injuries to her face.

On June 26, 2008, plaintiff filed an application with defendant Oakland Unified School District (the District) for leave to present a late claim under Government Code section 911.6, subdivision (b)(2), of the Tort Claims Act (Gov. Code, § 900 et seq.)[2] That same day, she filed a notice of claim against the District.

[1] The following facts are taken from the complaint as well as documents that were judicially noticed by the trial court.

[2] All further statutory references are to the Government Code unless otherwise indicated.

On July 14, 2008, Janette Puccetti, the District's claim manager, sent a letter to plaintiff's attorney indicating that the District had accepted the late-filed claim. An accompanying notice of insufficiency informed him that the claim was deficient in that it did not substantially comply with the requirements of section 910.[3]

On August 5, 2008, plaintiff filed an amended notice of claim.

On August 28, 2008, Puccetti sent a letter to plaintiff's attorney notifying him that the claim review period would be extended until October 20, 2008 to allow him the opportunity to submit additional documents that he had offered to send in support of the claim. Plaintiff's attorney agreed to the extension and submitted various medical records to the District over the next several weeks.

On December 29, 2008, plaintiff's attorney sent Puccetti a letter demanding a settlement in the amount of $277,325. The settlement offer was stated to expire on January 20, 2009.

On March 17, 2009, plaintiff's attorney sent another letter asking Puccetti to review the settlement demand package and "get back to me."

On April 15, 2009, Puccetti sent a reply, indicating that she had received the demand. The letter further states: "As I previously advised, we believe that there is no basis for District liability here. However, if you provide proof of your client's out of pocket treatment costs, we will consider some payment of those costs. Please convey this to your client."

On June 8, 2009, plaintiff's attorney asked Puccetti to either extend a settlement offer to his client, or deny the claim to enable him to begin litigation immediately. The substantive portion of the letter concludes: "My client cannot wait forever to resolve this case."

[3] Section 910 sets forth the information that a claimant must include in a claim filed under the Tort Claims Act. The information is intended to provide notice to the public entity in order to permit investigation and possible settlement to avoid the expense of litigation.

On December 21, 2009, plaintiff's attorney sent Puccetti a final demand letter, advising her that if he did not receive a settlement offer by January 15, 2010, he would file a lawsuit against the District.

On June 15, 2011, plaintiff filed a complaint for personal injury against the District and Montera.[4]

On July 19, 2011, the District and Montera (collectively referred to as defendants) filed a demurrer to the complaint. Defendants asserted that (1) the civil suit was barred by the applicable statute of limitations under section 945.6, (2) the complaint failed to identify any statutory basis for liability, (3) Montera is not an entity capable of being sued, (4) no guardian ad litem had been appointed for plaintiff, and (5) plaintiff's mother had failed to submit a government claim prior to initiating her lawsuit.

On September 2, 2011, plaintiff filed her opposition to the demurrer. She contended the complaint was not time-barred because the statute of limitations had been tolled due to her minority.[5] She also argued that even if the lawsuit was time-barred, the doctrine of equitable estoppel prevented defendants from asserting noncompliance with the claims statute as an affirmative defense. As to defendants' other points of error, she stated she could amend the complaint to cure any defects.

On September 15, 2011, the trial court sustained the demurrer without leave to amend. The court found the complaint was time-barred as a matter of law in that it was not filed within two years of plaintiff's injury, as required by section 945.6, subdivision (a)(2).[6]

On November 2, 2011, the trial court filed its order dismissing the complaint with prejudice. This appeal followed.

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[4] Plaintiff's mother is also named as a plaintiff in the complaint. Additionally, two individuals are named as defendants. None are parties to this appeal.

[5] Plaintiff was born in August 1996.

[6] Section 945.6, subdivision (a)(2), provides, in part: "[A]ny suit brought against a public entity on a cause of action for which a claim is required to be presented . . . must be commenced . . . [i]f written notice is not given in accordance with Section 913, within two years from the accrual of the cause of action."

DISCUSSION

I. Standard of Review

"In determining whether plaintiffs properly stated a claim for relief, our standard of review is clear: ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' [Citations.]" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

" 'A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred. [Citation.]' [Citation]" (*Geneva Towers Ltd. Partnership v. City and County of San Francisco* (2003) 29 Cal.4th 769, 781; accord, *State of California ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 413.)

II. Statute of Limitations

A. General Principles

The Tort Claims Act (the Act) mandates strict deadlines for filing suit. (*Chase v. State of California* (1977) 67 Cal.App.3d 808, 812.) The Act "manifests a purpose that the time within which an action may be commenced under it is absolute, and will not be extended for any reason." (*Chase, supra,* at p. 812.) In *Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, 981 (*Martell*), the appellate court explained that, " 'Suits against a public entity are governed by the specific statute of

limitations provided in the Government Code, rather than the statute of limitations which applies to private defendants. [Citation.]' " Thus, the Act consists "of a comprehensive format specifying the parameters of governmental liability, including . . . a detailed procedure for the advance filing of a claim as a prerequisite to filing suit" and deadlines "as to both the filing of claims and the commencement of litigation . . . ." (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 28, fn. omitted.) These rules strictly "control the basis under which public entities may be liable for damages." (*Id*. at p. 29.)

B. The District May Assert the Statute of Limitations

At the outset, we note plaintiff appears to be confused as to the sequence of events in this case. She asserts defendants "accepted the claim and agreed to pay some of [her] medical bills but never did so." This assertion is not supported by the record.

Plaintiff quotes the following passage from Puccetti's July 14, 2008 letter: "This is to inform you that *the above-referenced late claim application* which you presented to the Oakland Unified School District on or about June 30, 2008, *has been accepted*." (Italics added.) From this statement, plaintiff draws the remarkable conclusion that "[s]ince [the District] accepted [plaintiff's] claim the statute of limitation is inapplicable. This acceptance means that [the District] will evaluate [the] claim and pay it. Therefore, [she] did not have to worry about filing a lawsuit." As the italicized language indicates, however, the District did not accept plaintiff's claim. It merely agreed to accept her tardy claim application.

Plaintiff also relies on Puccetti's letter dated April 15, 2009, in which she advised that while the District had concluded there was "*no basis* for District liability," it would "*consider* some payment" of her out-of-pocket treatment costs. (Italics added.) Plaintiff claims this letter further evidences the District's willingness to pay part of her medical bills, and shows that the parties were in settlement negotiations. In our view, the written exchange is a far cry from an agreement to pay any of her bills. Nor does it evidence a willingness to participate in settlement negotiations. Plaintiff herself notes that after this

letter, neither Puccetti nor anyone from the District responded to her further demand letters.

Plaintiff also relies on *Nicholson-Brown, Inc. v. City of San Jose* (1976) 62 Cal.App.3d 526 (*Nicholson-Brown*), overruled on another point in *Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 815, footnote 18, for the proposition that she "correctly and reasonably relied on [the District's] conduct as implying that [it] would not assert the statute of limitations while settlement negotiations was [*sic*] in progress." The portion of the opinion plaintiff cites to concerns the doctrine of equitable estoppel, which we address below.

C. The Statute Was Not Tolled By Plaintiff's Minority

A statute of limitations typically begins to run, and a cause of action accrues, when the plaintiff is injured. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806; *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109.) As noted above, plaintiff was injured on December 5, 2007. Plaintiff claims the statute of limitations applicable to her should be tolled during her minority until she turns 18 years old. She relies on *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1233. That case is inapposite.

In *Arcadia Unified*, a former student sued a school district after the district denied as untimely her tort claim of childhood sexual abuse. The trial court sustained, without leave to amend, the district's demurrer to the student's first amended complaint and entered a judgment of dismissal, finding that the student had failed to file a timely claim. The Court of Appeal reversed the judgment of dismissal and remanded the matter to the trial court with directions to reinstate the first amended complaint. The appellate court concluded the student's allegations were sufficient to invoke the delayed discovery rule of accrual. Thus, *Arcadia Unified* pertains to when a cause of action arises, and does not concern tolling of the statute of limitations.

It is also well settled that "the public policy disfavoring application of statutes of limitation to minors does not extend to complaints against public entities. Code of Civil

Procedure section 352,[7] which reflects that policy, generally tolls statutes of limitations for minors before they become adults, but specifically bars tolling for minors with claims against public entities." (*Martell, supra,* 67 Cal.App.4th 978, 983–984.) Here, the material facts are undisputed. Plaintiff sustained personal injuries on December 5, 2007, after she was tripped by another student. Because the District did not deny her claim in writing, she had two years from the date of accrual to file this action under section 945.6, subdivision (a)(2). The two year statute of limitations expired on December 5, 2009, the second-year anniversary of her fall at school. The complaint was not filed until June 15, 2011. Therefore, the complaint is barred by the statute of limitations.

III. Equitable Estoppel

Plaintiff claims the District is estopped from asserting the statute of limitations defense. " 'Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.' [Citation.] ' "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." ' [Citations.]" (*Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 37; see also *Addison v. State of California* (1978) 21 Cal.3d 313, 319–320.) " 'The existence of an estoppel is generally a question of fact for the trial court whose determination is conclusive on appeal unless the opposite conclusion is the only one that can be reasonably drawn from the evidence. [Citation.]' [Citation.]" (*Nicholson-Brown, supra,* 62 Cal.App.3d 526, 532.)

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[7] Code of Civil Procedure section 352 provides, in part, "(a) If a person entitled to bring [a tort] action . . . is, at the time the cause of action accrued . . . under the age of majority . . . the time of the disability [due to his juvenile status] is not part of the time limited for the commencement of the action. [¶] (b) This section does not apply to an action against a public entity . . . upon a cause of action for which a claim is required to be presented in accordance with [the Tort Claims Act]."

Plaintiff first claims the trial court erred in failing to hold a hearing or to elicit more factual information from the parties, contending it failed to analyze this case under the doctrine of equitable estoppel. To the contrary, the trial court's order demonstrates that it explicitly considered this issue and concluded plaintiff's assertions lacked merit: "Plaintiffs have failed to either allege or put forth any misrepresentations or promises on the part of Defendants to support the argument that Plaintiffs were induced or lulled into delaying the filing of the complaint in reliance thereon." On appeal she does not allege any new information, apart from repeating her basic misunderstanding of the import of the communications that she received from Puccetti. After referring to the exchange of letters we described at the outset of this opinion, plaintiff states: "In this case, Ms. Puccetti [*sic*] action or inaction misled appellant about her need to file this case anytime before she filed it." Thus, plaintiff has not shown that the trial court overlooked any information whatsoever.

As to the merits of her argument, we conclude plaintiff has made no showing of facts that were known to the District but unknown to her. She was not ignorant of the fact that a suit on a cause of action against a public entity must be filed within two years of a claim that is deemed rejected by inaction on the part of the entity. Her insistence that the District misled her by allegedly accepting her claim and entering into settlement negotiations is not borne out by the record. As noted above, while the District accepted her late-filed claim application, it never stated that it accepted liability. Indeed, Puccetti explicitly affirmed in her letter dated April 15, 2009, that the District did not believe it had any liability. Thus, plaintiff knew more than six months before the statute of limitations expired that the District did not deem her claim to be viable. Nor did the District's offer *to consider* paying some of her out-of-pocket expenses amount to an agreement to enter into settlement negotiations. That the District unambiguously showed its unwillingness to accede to her settlement demands, and, indeed eventually stopped responding to them, is enough to have apprised plaintiff of the need to move forward with her lawsuit before the statute of limitations expired.

Plaintiff also relies on the opinion in *Nicholson-Brown* for the proposition that the District is estopped because the parties were engaged in settlement negotiations. In that case, the appellate court affirmed a trial court's finding that a municipality was estopped from asserting the statute of limitations against a plaintiff where "[t]here was evidence that discussions of the issues in this litigation, between representatives of the parties, commenced February 4, 1969, and continued until a written agreement settling one issue was entered into between the City and [the plaintiff] on November 24, 1970; [the plaintiff's] complaint was filed 14 days later on December 8, 1970. The trial court could infer that [the plaintiff] reasonably relied on the City's conduct as implying that the City would not assert the statute of limitations while settlement negotiations were in progress." (*Nicholson-Brown, supra,* 62 Cal.App.3d 526, 532.)

Here, there is nothing in the record that suggests the District intended to cause plaintiff to act one way or another with respect to filing a complaint. In particular, there is no evidence that the District engaged in any discussion of the issues in this case, other than to deny liability. Nor did the parties ever arrive at a written settlement agreement on any issue. Thus, at all times she was free to commence her action as she, in fact, implicitly and explicitly threatened to do several times prior to December 5, 2009. Additionally, there was no need for the District to formally deny her claim in order for her to proceed with a lawsuit. Under the Act, the principle consequence of a formal written denial is the commencement of a six-month statute of limitations period under section 945.6, subdivision (a)(1).[8] Simply put, her attorney's failure to file this lawsuit in a timely manner is not the District's responsibility.

DISPOSITION

The judgment is affirmed.

[8] Section 945.6, subdivision (a)(1) provides, in part: "[A]ny suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced: [¶] If written notice is given in accordance with Section 913, not later than six months after the date such notice is personally delivered or deposited in the mail."

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Dondero, J.

We concur:

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Marchiano, P. J.

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Banke, J.